

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned On Briefs May 14, 2008

**JOSE LUIS QUINTERO a/k/a JOSE VILLALBA v.
STATE OF TENNESSEE**

**Appeal from the Criminal Court for Wilson County
Nos. 01-1290 and 01-1291A John Wootten, Jr., Judge**

No. M2007-02068-CCA-R3-PC - Filed September 24, 2008

The petitioner, Jose Luis Quintero a/k/a Jose Villalba, appeals as of right the Wilson County Criminal Court's summary dismissal of his post-conviction petition challenging his 2002 convictions for two counts of first degree murder because it was filed beyond the one-year statute of limitations. The petitioner contends that his petition is not time-barred because it was filed within one year of the denial of application for a writ of certiorari by the United States Supreme Court. He also contends that the statute of limitations should have been tolled due to his alleged mental incompetence caused by his alleged non-fluency in the English language and marginal literacy in the Spanish language. Following our review, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and J. C. McLIN, JJ., joined.

Jose Luis Quintero a/k/a Jose Villalba, Tiptonville, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General & Reporter; Clarence E. Lutz, Assistant Attorney General; Tom P. Thompson, District Attorney General Pro Tempore; and David Durham, Assistant District Attorney General, attorneys for appellee, State of Tennessee.

OPINION

In October 2002, the petitioner was convicted in a bench trial of two counts of first degree murder. The convictions were affirmed on direct appeal. State v. Jose Quintero, M2003-02311-CCA-R3-CD, 2005 WL 941004 (Tenn. Crim. App. Apr. 22, 2005), app. denied (Tenn. Oct. 10, 2005). The petitioner sought certiorari review with the United States Supreme Court that was denied on June 30, 2006. Quintero v. Tennessee, 126 S. Ct. 2979 (2006). The petitioner filed a petition for

post-conviction relief on March 28, 2007. The trial court summarily dismissed the post-conviction petition because it was filed outside the one-year statute of limitations.

ANALYSIS

Tennessee Code Annotated section 40-30-102(a) provides that a person seeking post-conviction relief must file a petition “within one (1) year of the date of the final action of the highest state appellate court to which an appeal is taken . . . or consideration of the petition shall be barred.” The legislature has also provided that the statute of limitations shall not be tolled for any reason. Id. The petitioner filed his petition seventeen months after the denial of his application for permission to appeal with our supreme court. The petitioner’s argument that the statute of limitations for filing a petition for post-conviction relief is tolled during the pendency of a petition for a writ of certiorari to the United States Supreme Court has been rejected by this court. See, e.g., Chelsey Randell Thompson v. State, No. E2002-00580-CCA-R3-PC, 2003 WL 21276129 (Tenn. Crim. App. June 3, 2003), app. denied (Tenn. Oct.6, 2003). Therefore, we conclude that the post-conviction court correctly dismissed the petition as time-barred.

Alternatively, the petitioner contends that due process concerns require that the statute of limitations be tolled based upon his alleged lack of fluency with the English language and marginal literacy of the Spanish dialect that was utilized by his court interpreter at trial. He argues that these language barriers are the equivalent of mental incompetence that would toll the statute of limitations. See Seals v. State, 23 S.W.3d 272, 279 (Tenn. 2000). This argument has been rejected by this court. See, e.g., Garcia Flores Isladoro v. State, No. M2002-01345-CCA-R3-CO, 2003 WL 1610877 (Tenn. Crim. App. Mar. 27, 2003), app. denied (Tenn. June 30, 2003); Guillermo Matiaz Juan v. State, No. 03C01-9708-CR-00318, 1999 WL 76453 (Tenn. Crim. App. Feb. 18, 1999), app. denied (Tenn. July 12, 1999). Therefore, we conclude that due process does not require the tolling of the statute of limitations based upon these allegations. The post-conviction petition was properly dismissed.

CONCLUSION

The petition for post-conviction relief was correctly dismissed as time-barred, and the petitioner’s allegations regarding English fluency are not the equivalent of mental incompetence for which due process would require the tolling of the statute of limitations. Therefore, the judgment of the post-conviction court is affirmed.

D. KELLY THOMAS, JR., JUDGE